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EMPLOYER-EMPLOYEE Relations in the Public Service of Canada

Proposals for Legislative Change Part II

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EMPLOYER-EMPLOYEE RELATIONS IN THE

PUBLIC SERVICE OF CANADA

Proposals For Legislative Change

PART II

March 1974

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Part I of this Report contained a great number of specific recommendations for change together with the reasoning from which they arise. As a convenience to the reader, Part II draws the recommendations together with reference to the paragraph of the text of Part I from which each recommendation is taken. Recommendations are numbered from 1 to 231, the letter R in front of each number denoting that what follows is a recommendation.

This is not a summary of the Report and the reader should be alerted to the risk that is inherent in relying on the statement of a recommendation taken out of the context of its justification.

The recommendations are grouped under the chapters of the Report. In this restatement of the recommendations, however, some rearrangement has occurred within individual chapters so that the order of this Part does not follow strictly that of the Report.


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Chapter 1

INTRODUCTION

Although this chapter contains no specific recommendations, it does set out some general approaches of the author which help to explain the recommendations that appear in later chapters. The recommendations themselves will be easier to follow and comprehend if some of these general points are noted.

No system of employer-employee relations can be appropriate for all time. Changes in the mood of the parties and of the public require that we be constantly on the look-out for new procedures, new techniques and new remedies. It is my conviction that the basic structure of the Public Service Staff Relations Act is sound. The focus of this Report is on the revisions which experience has suggested would more adequately meet the needs of the employer and the employees, the employee organizations that represent them and the interest of the public.

The employment relationship is composed of many aspects which do, in the final analysis, affect one another. The recommendations in this Report must, therefore, be read as a whole. It is fair to say that some of them would not have been made, or would have been given a different thrust, had it not been for the fact that they were devised as a counterweight to some other proposal, or if the realities were otherwise than they are.

There has been a sense of urgency on the part of all concerned that the proposals of this Report be made available at an early date. As a result, certain matters that would require more lengthy examination before a recommendation could be made are noted, but are left to future review.

Employment relationships in the public sector cover a wide variety of circumstances. Nevertheless, legislation must be drafted in general terms adapted to the conditions of as large a proportion of the employees as possible with whatever deviations that can accommodate the conditions of particular groups without destroying the basic principles of the scheme.

The effectiveness of any legislative scheme depends ultimately on the capabilities of the parties involved. It would not be appropriate to vest in the Public Service Staff Relations Board more authority than it can effectively organize itself to exercise at any given time, or to impose upon the parties subject to this legislation a burden they do not have the capacity to bear. As a result, some of the proposed alterations in the legislation, especially those that are extensive in character, are recommended to be phased in over a period of time, rather than brought into effect immediately upon the enactment of the legislation.

The historical evolution of employment policies in the Public Service has meant that some terms and conditions have been set by legislation, some by the Treasury Board and others through such independent bodies as the Public Service Commission. Many rules and practices have been established which cover the whole of the Public Service and flow across the lines of bargaining units established for collective bargaining. Many such matters are non-bargainable. To make these matters fully bargainable immediately for each bargaining unit would create a system of vested rights for the employees in each unit that might be difficult to eliminate at a later stage. An attempt should be made to develop a forum for dealing with those matters which should remain service-wide, especially those which are, or are recommended for inclusion, among the matters subject to bargaining. Such a forum would pave

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the way for further statutory changes that would provide for coalition bargaining.

It is for this reason, and in a setting where consultation has had considerable success, both in dealing with issues of concern to the parties and in developing the skills that have made bargaining under the present legislation effective, that some recommendations are made in this Report which call for consultation rather than bargaining at this stage. It is to be hoped that these recommended procedures will be given a fair trial before other ways are sought for dealing with these subjects.

Chapter 2

OBSERVATIONS REGARDING CLASSES OF PERSONS TO WHOM THE LEGISLATION APPLIES

Persons Employed in a Managerial or Confidential Capacity

R 1 The definition of "persons employed in a managerial or confidential capacity" which is contained in the definition section of the Public Service Staff Relations Act should read as follows:

> "person employed in a managerial or confidential capacity" means any person who
> (a) is employed in a position confidential to the Governor General, a Minister of the Crown, a judge of the Supreme or Federal Court of Canada, the deputy head of a department or the chief executive officer of any other portion of the Public Service,
> (b) is employed as a legal officer in the Department of Justice,
> (c) is an officer or employee on the payroll of the Treasury Board as presently organized (appropriate language should be added to exclude from this subparagraph the internal administrative services branch),
> (d) is directly involved on behalf of the Public Service Commission in a formal process of
> (i) consultation, or
> (ii) redress
> prescribed by or under the Public Service Employment Act,
> (e) regularly participates in a significant degree in the formulation and determination of government policies and programs,
> (f) is authorized by the employer to exercise a significant measure of control over employees,
> (g) is directly involved on behalf of the employer
> (i) in the processes of collective bargaining or consultation prescribed by this Act, or
> (ii) in the exercise of discretion which is not of a routine or clerical nature in the administration of a collective agreement, or the provisions of a statute, or a regulation, by-law, direction or other instrument prescribing terms and conditions of employment,

(h) is a person to whom the persons identified in subparagraph (c), (d), (e), (f), or (g) are directly accountable in respect of the duties described in such subparagraphs, or
(i) is engaged in confidential duties under the exclusive direction and control of a person or persons identified in subparagraphs (b), (c), (d), (e), (f), (g) or (h), other than a person in a support capacity whose confidential duties relate solely to the processing of grievances at the first level in the grievance procedure established under this Act,

and includes any other person who, in the opinion of the Board, should not be included in a bargaining unit by reason of a conflict between his duties and responsibilities to the employer and any interest he might have as a member of a bargaining unit. (See also Recommendations 186-189.)

Paragraph 52

R 2 The method of compensating "excluded" persons should be different from that established for compensating employees and should recognize their distinct responsibilities.

Paragraph 52

R 3 The proposed amendments to the definition of "persons employed in a managerial or confidential capacity" and the procedures related thereto should come into force one year after the coming into force of the remainder of the revised legislation, this period being subject to abridgment or extension by consent of the parties or by direction of the Board, and during this period the present definition should remain operative.

Paragraph 31

R 4 Within three months after the coming into force of the revised

legislation the employer should be required to serve upon the bargaining agent for each bargaining unit, and upon the Board, a profile of the management team it proposes to identify, in accordance with the revised definition of the term "person employed in a managerial or confidential capacity," but if the employer is unable to provide such a statement within the three-month period, the Board should have the power to authorize such extension of the time as it deems necessary.

Paragraph 31

R 5 Within one month after the statement of proposed managerial and confidential persons has been served on the bargaining agent, or such longer period as the parties may agree upon, representatives of the employer and the bargaining agent should be required to meet and discuss the statement with a view to reaching agreement regarding the persons to be identified, and an officer of the Board should be available to assist them in their endeavours.

Paragraph 31

R 6 If, by the end of the one-year period referred to in Recommendation 3, there remains a significant area of disagreement as to the identification of persons employed in a managerial or confidential capacity as it pertains to any bargaining unit, the Board should be vested with the discretion to postpone the date for the introduction of the new procedure and the new definitions for that unit until it has rendered a decision on the proposals for exclusion

which remain in dispute.

Paragraph 32

R 7 When the new definitions and procedures referred to in Recommendation 3 are applicable and the employer proposes to identify as a managerial or confidential "exclusion" a person who would otherwise be an employee in a bargaining unit, the employer should be obliged to give the bargaining agent notice that it is assigning to such person duties and responsibilities that warrant the employer identifying the person as a member of management. However, such an assignment of duties should not have the effect of causing the person concerned to be treated under the Act as coming within the managerial or confidential class until two months after such notification unless the duties are identical to duties which were previously performed by a person identified as being employed in a managerial or confidential capacity or the employer secures the consent of the bargaining agent.

Paragraph 33

R 8 Where the employer, either on a temporary or continuing basis, assigns duties to a person which in the view of the employer bring that person within the class of persons employed in a managerial or confidential capacity, such person should, subject to the notification and delay referred to in Recommendation 7, be so regarded for all purposes of the Public Service Staff Relations Act unless and until, upon objection of the bargaining agent, the Board rules otherwise.

Paragraph 33

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R 9 Where a person previously identified as a person employed in a managerial or confidential capacity ceases to perform duties which caused him to be so identified, and by reason of the change in duties is no longer a person employed in a managerial or confidential capacity, the employer should be obliged to notify the appropriate bargaining agent forthwith to that effect and that person should thereupon be deemed to be included in the appropriate bargaining unit.

Paragraph 33

R 10 Notwithstanding the proposals contained in Recommendation 8, after a request for the establishment of a conciliation board has been filed with the Chairman of the Public Service Staff Relations Board, and until a new collective agreement is entered into, the employer should not be entitled, without the consent of the Board, to identify additional persons in that bargaining unit as being employed in a managerial or confidential capacity except where the person concerned is assigned, on a temporary or permanent basis, to replace a person previously identified as a person employed in a managerial or confidential capacity.

Paragraph 35

R 11 Where a person who was previously an employee in a bargaining unit has been assigned duties and responsibilities by the employer which cause him to be identified as a person employed in a managerial or confidential capacity, the employer should, from the date on which

such identification becomes effective under Recommendation 7, have the right to cease the check-off of dues to be paid to the bargaining agent on behalf of such a person, as may be provided under the terms of the relevant collective agreement, or under an arrangement for voluntary revocable check-off as elsewhere recommended in this Report.

Paragraph 37

R 12 Where, on objection of a bargaining agent the Board rules that a person identified by the employer as a person employed in a managerial or confidential capacity should not have been so identified, and the check-off of dues for such an employee has been discontinued by the employer, the employer should be required, at periodic intervals, to make a payment to the bargaining agent in lieu of the dues that should have been checked-off in relation to such person or persons.

Paragraph 37

Casuals

R 13 Casual or temporary employees, who are not protected under collective agreements, should be given statutory assurance that their rates of pay (including premium pay and shift premiums), hours of work, annual leave and holiday entitlements and conditions of employment directly related thereto will, pro rata, be the same as those generally established for employees doing similar work in the applicable category.

Paragraph 58

R 14 Casual or temporary employees who are not protected under collective agreements should be entitled to present grievances alleging noncompliance with any terms and conditions of employment applicable to them, but such grievances should not be referable to adjudication.

Paragraph 58

R 15 Reference in the definition of the term "employee" in the Public Service Staff Relations Act to the minimum period of six months should be eliminated and replaced by words which exclude a person from the definition "unless he has been employed for not less than 120 days in any continuous period of twelve months."

Paragraph 59

R 16 There are persons hired for temporary periods by various departments, under special employment programs of the federal government outside their manpower and budgetary authorities. Whether or not such persons should be treated as employees under the Act should be scrutinized by the appropriate authorities.

Paragraph 60

R 17 Students hired for the "school vacation" periods, whether or not they are employed under a special employment program or have been provided for in the budgetary requirements of a department, should be excluded from the definition of the term "employee" under the Public Service Staff Relations Act.

Paragraph 61

R 18 Certain employees who have been retained in the Public Service on what might be regarded as a renewable term basis, and who cannot qualify for an indeterminate appointment under the present rules should, by appropriate amendments to the legislation or regulations, be "grandfathered" so as to permit the Public Service Commission to confer on them the status of indeterminate employees.

Paragraph 62

Personal Service Contracts

R 19 Except as provided in Recommendation 20, where a person enters into a contract with a department for the performance of personal services and

(a) his duties and responsibilities are substantially similar to those of employees in a bargaining unit for which a bargaining agent has been certified,

(b) he is subject to the same direction and control in the discharge of his duties and responsibilities as employees in such bargaining unit, and

(c) his contract is for a period in excess of 60 working days,

the person should be treated as if he were a person appointed under the Public Service Employment Act and be subject to the terms and conditions of employment applicable to a person appointed for a specified period. The terms of the collective agreement, if applicable, should supersede those of the contract he entered into with the department, except any provision relating to the duration of the engagement.

Paragraph 66

R 20 Notwithstanding the recommendations made in Recommendation 19, and except for persons under contract to perform work normally performed by employees in the operational and administrative support categories, a person who has entered into a personal service contract with a department should not be treated as an employee under the Public Service Staff Relations Act if

(a) the principal purpose of the contract is to provide for the training or development of the person concerned or for an exchange of expertise between the federal government and an employer in another jurisdiction; or

(b) a person is engaged on a personal service contract to perform services of a creative and artistic nature, or

(c) (i) Parliament has passed legislation providing for the discharge of a substantially new function by the Public Service or a department or agency undertakes a major review or modification of an existing policy, program or administrative process, and

(ii) the deputy head of the department or the chief executive officer of the agency concerned, within the twelve-month period following the coming into force of the revised legislation or the decision to undertake the review or modification, enters into a contract for personal service in respect thereof with an individual and the contract is for a period not exceeding twenty-four months. If need to continue the personal service contract beyond the two-year period is demonstrated, the Public Service Staff Relations Board would be empowered to grant an extension.

Paragraphs 67 and 68

R 21 By statute or administrative direction, every proposal for the engagement of a person under a personal service contract should

contain a reference to the provisions of law which, in the specified circumstances, would render such a contract invalid and would substitute in its place the terms and conditions of employment applicable to a person appointed for a specified term.

Paragraph 67

R 22 It should remain within the authority of the Public Service Staff Relations Board to determine whether the relationship between the employer and a person ostensibly under a personal service contract is in reality an employment relationship that would bring such person within the boundaries of the Act.

Paragraph 68

R 23 In addition, to avoid disruption, it is recommended that personal service contracts in effect when the amended legislation becomes operational should not be subject to the foregoing recommendations during the term of such contracts or, with the approval of the Board, any renewal thereof.

Paragraph 69

Chapter 3

SCOPE OF BARGAINING

General

R 24 The provisions of the Public Service Staff Relations Act restricting collective agreements from altering, eliminating or introducing terms or conditions of employment where such aspects of the agreement "would require or have the effect of requiring the enactment or amendment of any legislation by Parliament, except for the purpose of appropriating monies required for its implementation ...," should be retained.

Paragraph 77

Public Service Employment Act

R 25 Authority to make appointments (including promotions but excluding certain classes of transfers as noted in Recommendation 27) and to determine selection standards should remain under the provisions of the Public Service Employment Act and not be made subject to bargaining.

Paragraph 82

R 26 The provisions of the Public Service Employment Act or the procedures pursued thereunder with regard to consultation should be strengthened to provide the bargaining agents with assurance that, where the Public Service Commission exercises a discretion in relation to the administration of the Act with respect to the preparation of selection standards, the principles governing promotion and similar instruments of authority, the bargaining agents will be

consulted and will have an adequate opportunity to make their views known before such instruments are promulgated.

Paragraph 83

R 27 It is recommended that

(a) the Public Service Employment Act should be revised to provide that, where the Commission has in its selection standards established common qualifications (i.e., selection standards) applicable to an identified grouping of positions and the parties agree that the duties and responsibilities set out in the job descriptions of the several positions are interchangeable, appointments (i.e., transfers) between positions in the grouping would be excluded from the jurisdiction of the Commission and be subject to the authority of the Treasury Board as employer, or to deputy heads acting as agents of the employer;

(b) the Public Service Staff Relations Act should be revised to permit collective bargaining on procedures and criteria governing the order of preference for transfers of employees between positions or work stations within such a grouping, and the geographic or administrative boundaries within which such preferences could be exercised and on whether such transfers should be subject to a probationary period;

(c) the Public Service Employment Act should provide that the order of preference provided for in that statute, i.e., for employees returning from leave of absence, ministerial staffs, lay-offs and so on, would supersede any order of preference established by the employer, either unilaterally or in a collective agreement. (See also Recommendations 30-44.)

Paragraph 88

R 28 The Public Service Commission should consider the possibility of making some appointments in such a way that the appointee will not be "restricted" to a specific position.

Paragraph 89

R 29 The criteria and procedures governing the order of lay-off and recall and the extent of notice that the employer would be required to give an employee before lay-off should not be made bargainable, but the financial impact of lay-off (relocation costs, severance pay and other emoluments consequent on lay-off) should remain bargainable as is the case at present. However, employees on notice of lay-off or who have been laid off, whether it be because of lack of work, the discontinuance of a function, "redundancy" or the contracting out of work, should be provided with statutory protection.

Paragraph 98

R 30 The Public Service Commission should be vested with authority to establish by regulation

(a) the order in which employees whose duties and responsibilities are essentially the same are to be laid off, and

(b) the order in which employees who have been laid off and who have the minimum qualifications required for appointment to a vacant position are to be recalled,

so as to provide for preference of employment to be given, as the Commission may deem appropriate having regard to geographic organizational, occupational or any other relevant consideration,

to the employee who has the longest service in the Public Service.

Paragraph 99

R 31 Employees on notice of lay-off or who have been laid off should have statutory priority rights of appointment to vacancies in their own or another occupational group, but henceforth based on possession of the minimum qualifications required for appointment to a vacant position, or the capability of becoming qualified after a reasonable period in the position, and with the seniority factor being taken into account.

Paragraph 99

R 32 The Public Service Commission should continue to have authority to determine the period within which a laid off employee will have an entitlement to be recalled.

Paragraph 99

R 33 When an employee is recalled from lay-off by authority of the Commission and appointed to any appropriate vacancy by the Commission, no deputy head should be empowered to reject such an employee, either prior to his appointment or during probation, without the approval of the Commission.

Paragraph 99

R 34 Subject to the exceptions set out in Recommendation 35, employees appointed for an indeterminate period should be entitled, after

they have been employed for six months, to a statutory minimum period of lay-off notice to be fixed on a sliding scale in accordance with the length of service and age, as follows:

(a) for all such employees, one day's notice for each completed month of service, with a minimum of ten days' notice in any case;

(b) for employees with five years' service who have reached 35 years of age, an additional one day's notice for each month of service following the date on which he satisfies these conditions;

(c) the statutory maximum notice for any employee not to exceed 132 days.

Paragraph 100

R 35 No statutory entitlement to notice should accrue to any employee who is to be laid off for a period not in excess of 20 continuous working days, or a total of 30 working days in any continuous period of 60 working days.

Paragraph 100

R 36 A person laid off but not entitled to notice, as provided in Recommendation 35, should not be regarded as having ceased to be an employee because of the operation of subsection 29(2) of the Public Service Employment Act.

Paragraph 100

R 37 An employee whose duties and responsibilities are seasonal in nature should not be regarded as a lay-off in the "off season."

Paragraph 101

R 38 The legislation should make it clear that, where lay-off or recall is involved, the regulations of the Commission with regard to these matters supersede the provisions of collective agreements regarding selection of assignments, as noted in Recommendation 27.

Paragraph 102

R 39 Consideration should be given to the problem of what protection, in respect of lay-off, might be afforded to persons who, although appointed for specified terms, have by virtue of their length of service become employees and members of bargaining units under the Public Service Staff Relations Act.

Paragraph 103

R 40 A laid off employee who refuses a recall to the position from which he was laid off, or a position having substantially the same duties and responsibilities, should, unless the location of the new position imposes an undue hardship on the employee, forfeit any further right to recall.

Paragraph 104

R 41 A laid off employee who refuses recall to a position classified at the same level, but having duties and responsibilities substantially different from the position from which he was laid off, or to a position classified at a lower level than the position from which he was laid off, should forfeit his right to recall if he refuses more than one such recall without legitimate reason.

Paragraph 104

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R 42 An employee who accepts a recall from lay-off to a position classified at a lower level than the position from which he was laid off should, for a period of time to be fixed by the Commission, be protected against competition and appeal for a reassignment to a position at the level which he formerly held.

Paragraph 104

R 43 In any situation involving lay-off or recall, an employee who feels his rights have not been respected should have recourse to an appeal mechanism provided under the Public Service Employment Act for that purpose.

Paragraph 105

R 44 Consideration should be given by the Commission and others who will share responsibility for implementation of the recommendations on lay-off and recall, to the requirements of employees, bargaining agents and departmental officials for information on lay-offs and job vacancies, and the characteristics of the system which will be required to provide that information to all concerned on a timely basis.

Paragraph 106

R 45 An employee appointed from within the Public Service under the authority of the Public Service Employment Act (see Recommendation 27), if rejected by a deputy head while on probation, should have a right of appeal to the Commission. The Commission should be

empowered to determine whether the employee has had a reasonable opportunity to demonstrate his capacity to carry out the duties and responsibilities of the position to which he was appointed, and to reinstate the employee in his probationary status or extend the period of probation if it deems it proper to do so.

Paragraph 111

R 46 Where in relation to Recommendation 45 the Commission upholds the deputy head in an appeal, the employee should be entitled to notice of rejection equal to that provided for a lay-off (see Recommendation 34), and during the period of notice should be paid at a level equal to that which he received in the position he occupied at the time of his appointment to the new position.

Paragraph 111

R 47 An employee who has been rejected as provided in Recommendation 46 should retain his status as an employee, and have the same rights of recall as of the date that he receives notice of rejection, as an employee who has been laid off.

Paragraph 111

R 48 The Public Service Staff Relations Act should provide that an employee on probation should not be permitted to challenge his rejection during the probationary period as a grievance referable to adjudication under the Public Service Staff Relations Act. (See also Recommendation 45.)

Paragraph 112

R 49 An employee whose probationary period has been extended should be accorded the same right to present a grievance against release for any cause as any continuing employee.

Paragraph 113

R 50 For employees appointed from outside the Public Service, some attention should be given to the procedures for induction, performance appraisal, evaluation by personnel officers and perhaps to some careful internal review before the rejection of a probationary employee to ensure that such persons receive fair treatment.

Paragraph 115

R 51 The Commission might profitably review its regulations in relation to the periods of probation now prescribed for various classes of positions to ascertain whether

(a) having regard to practice in the private sector, the present regulations provide an appropriate probationary period for each class of employee, and

(b) a person appointed from within the Public Service, including a person appointed for a specified period, should remain in a probationary status for the same period as a person from outside the Public Service.

Paragraph 116

R 52 The legislation should clearly indicate the rights of the parties to bargain on the availability of training programs and the terms and conditions under which an employee may have access to or to participate in such programs.

Paragraph 118

R 53 The legislation should also clearly indicate that no bargaining agent should be entitled to bargain with the employer regarding the course content of training programs.

Paragraph 118

R 54 No aspect of language training undertaken pursuant to the Government's Official Languages Policy for the Public Service, based on the requirement of the Official Languages Act, should be bargainable.

Paragraph 119

R 55 Performance evaluation should be made bargainable but nothing in a collective agreement relating to performance evaluation or employee appraisal should be construed to deny to the Commission the right to obtain, in such manner as it may deem appropriate, such information relating to, or evaluation of, the performance of an employee as it may require to discharge its responsibilities under the Public Service Employment Act.

Paragraph 122

Government Vessels Discipline Act

R 56 Appropriate authorities should review the provisions of the Government Vessels Discipline Act to determine whether the Act should be amended or repealed, and in any event consideration should be given to deleting reference to it in Schedule III of the Public Service Staff Relations Act.

Paragraph 124

Government Employees Compensation Act

R 57 The wording of the Public Service Staff Relations Act should be clarified to remove any doubts as to the rights of the parties to bargain compensation benefits additional to those provided for in the Government Employees Compensation Act.

Paragraph 125

Public Service Superannuation Act

R 58 Pension contributions, benefits or characteristics should not become bargainable issues. To ensure this, Parts I and III of the Public Service Superannuation Act should remain in Schedule III to the Public Service Staff Relations Act, and there should be added to this Schedule the Supplementary Retirement Benefits Act and the Statute Law (Supplementary Retirement Benefits) Amendment Act of 1973.

Paragraph 127

R 59 Consideration should be given to the expansion of the Advisory Committee on Superannuation to provide an opportunity for the representation thereon of all the bargaining agents, as well as to providing an opportunity for the employee representatives on the Advisory Committee to introduce matters on the agenda for discussion.

Paragraph 128

R 60 Part II of the Public Service Superannuation Act should be deleted from Schedule III of the Public Service Staff Relations Act so as to permit the possibility of bargaining over ancillary or

additional death benefits.

Paragraph 130

Section 7 of the Public Service Staff Relations Act

R 61 The organization of the Public Service should not be bargainable.

Paragraph 135

R 62 As a related matter, the authority of the employer to contract out work should be preserved.

Paragraph 136

R 63 The financial impact of reorganization on employees, such as relocation and severance benefits, is now and should continue to be bargainable. (See also Recommendation 29 et seq.)

Paragraph 137

R 64 The assignment of duties to positions and employees is an inseparable part of organization and should continue to be totally reserved to the employer.

Paragraph 138

R 65 Classification standards should not be made bargainable; however, it is proposed that the Public Service Staff Relations Act should provide for a formal system of consultation between the employer and bargaining agents relating to the classification standards applicable to employees represented by the bargaining agents.

Paragraph 146

..26

R 66 Authority should be vested in the Board to specify by regulation the structure of the initial and continuing cycles of consultation on classification standards in the central administration, but the authority should be couched in terms that would require such regulations to conform in general to the time-frame set out below. All occupational groups in the "central administration" of the Public Service should be scheduled for possible review of classification standards in this consultative process as follows:

(a) Initial Consultation Cycle

Date	Category	No. of groups
Jan. 1, 1975	Operational	12
Oct. 1, 1975	Technical	14
July 1, 1976	Scientific and Professional (Division A)	14
April 1, 1977	Scientific and Professional (Division B)	14
Jan. 1, 1978	Administrative Support and Administrative and Foreign Services	19

(b) Continuing Consultation Cycle (5 years)

Date	Category
Jan. 1, 1979	Operational
Jan. 1, 1980	Technical
Jan. 1, 1981	Scientific and Professional (Division A)
Jan. 1, 1982	Scientific and Professional (Division B)

Date	Category
Jan. 1, 1983	Administrative Support and Administrative and Foreign Services
Jan. 1, 1984	Operational (commencement of third cycle)

Paragraph 151

R 67 The Board should also be authorized to specify by regulation suitable cycles for consultation on classification standards for separate employers.

Paragraph 151

R 68 A bargaining agent should be entitled to give notice of its desire to consult with respect to the classification of positions occupied by employees in a bargaining unit within a period of not less than 90 days preceding the commencement of the phase of the cycle referable to the appropriate occupational group.

Paragraph 152

R 69 Where special circumstances arise outside the cycle that in the view of the bargaining agent warrant re-examination of a standard, the bargaining agent should be entitled to seek consent from the Public Service Staff Relations Board to give notice to consult. The Board should have the authority to attach to its consent such terms and conditions as it may deem proper in the circumstances.

Paragraph 152

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R 70 Where the parties consent to consultation with respect to a standard, consultation should be permissible at any time.

Paragraph 152

R 71 The employer should be entitled to initiate consultation for the introduction of a new standard or a revision of an existing standard at any time, but should be denied the right to implement an altered standard until the consultation process has been exhausted.

Paragraph 152

R 72 Where consultation has taken place outside the normal cycle and the matters consulted on have been determined, the employer should be entitled to apply to the Board to have further consultation on the aspects of the classification standard that have already been examined postponed for such period as the Board may direct.

Paragraph 153

R 73 Where notice to consult has been given by the bargaining agent or by the employer, the parties should be required to meet and consult in good faith within a thirty-day period following the commencement of the applicable phase, where the review occurs within the prescribed cycle, or within 30 days following the giving of the notice in all other cases.

Paragraph 154

R 74 Where a consensus is not arrived at, a mediator should be made available at any time after consultation commences on the joint application of the parties to the Chairman of the Public Service Staff Relations Board, or on the application of one of the parties if the Chairman, after consultation with both parties, concludes that a mediator would likely serve the interest of the parties in reaching an understanding.

Paragraphs 154 and 155

R 75 A person appointed to function as a mediator in the process of consultation relating to classification standards should not be empowered to make any public recommendations as to how the differences between the parties might be reconciled.

Paragraph 155

R 76 The appointment of a person appointed as a mediator in relation to consultation on classification standards should be limited to 30 days in the first instance, and be subject to abridgment or enlargement by the parties themselves, or by the Chairman of the Public Service Staff Relations Board after consultation with the parties.

Paragraph 156

R 77 Either party to consultation on classification standards should be entitled to terminate consultation

(a) at any time

(i) with the consent of the Chairman, where no mediator has been appointed,
(ii) following the termination of mediation, where a mediator has been appointed,
(iii) where both parties agree that there is no hope of reconciling their differences, or

(b) after the expiration of one year from the commencement of consultation.

Paragraph 157

R 78 The employer should be required, within three months following the termination of consultation with respect to a classification standard, or such longer period as the Board on application might approve, to inform the bargaining agent that the existing standard will continue in effect or to give notice of its intention to institute a revised standard.

Paragraph 158

R 79 If the parties agree that the revised standard requires no new rate of pay, the employer should make it operable forthwith. If the revised standard, in the view of either of the parties, requires a new or revised rate to pay, the parties should be required to consult with regard thereto, and if they do not reach agreement on the rate or rates within 30 days after the bargaining agent is informed by the employer that it proposes to institute the standard, the employer should make the revised standard operable at that time and establish an interim rate or rates.

Paragraph 158

R 80 Where interim rates for a revised standard are established unilaterally by the employer as provided in Recommendation 79,

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the appropriate rate would be subject to negotiation in the next round of bargaining, and where the matter becomes an issue before an arbitration tribunal, the tribunal should be authorized to make an award on the rate retroactive to the effective date of the application of the new standard, notwithstanding the provisions of section 72 of the Public Service Staff Relations Act. (See also Recommendations 153-167.)

Paragraph 158

R 81 Section 7 of the Public Service Staff Relations Act should remain unaltered save for appropriate language to accommodate the recommendations on consultation with regard to classification standards and on classification grievances.

Paragraph 160

Some Additional Subjects

R 82 The definition of the term "collective agreement" should be amended to make it clear that there is included within the subjects on which bargaining is permitted the mutual rights and obligations of the employer and the bargaining agent in the conduct of the relationship under a collective agreement or arbitral award.

Paragraph 161

Chapter 4

RESOLUTION OF INTEREST DISPUTES

Notice to Bargain and Its Concomitants

R 83 Paragraph 49(2)(b) of the Public Service Staff Relations Act should be amended to provide for a notice period for the commencement of bargaining of three months or such extended period as may be provided for in a collective agreement.

Paragraph 177

R 84 The Public Service Staff Relations Board should be authorized to require a copy of the notice to bargain to be sent to the Secretary of the Board, and for each party to a collective agreement, forthwith upon its execution, to file one copy of the collective agreement with the Board.

Paragraph 178

R 85 Section 51 of the Public Service Staff Relations Act should be amended to empower the Board to permit the employer to alter terms and conditions of employment for employees in a bargaining unit with respect to which notice to bargain has been given, where the bar that might otherwise be created by section 51 would make it impossible to introduce such alterations for another unit or units, and should also empower the Board in its discretion to attach conditions to the permission it grants in such circumstances.

Paragraph 179

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Conciliation

R 86 In the absence of a request for conciliation by one of the parties, the Chairman should be permitted to appoint a conciliator, even after there has been a request for a conciliation board or for arbitration, but only after he has consulted both parties and each of them has had an opportunity of making known to him its views as to the desirability of having a conciliator intervene.

Paragraph 181

R 87 Where a request for a conciliation board or for arbitration has been received, the appointment of a conciliator under the preceding recommendation should be for a limited period of 14 days, subject to the time being extended (a) on consent of the parties, or (b) by the Chairman but only for an additional period not in excess of 14 days and even then only after consultation with the parties.

Paragraph 181

R 88 There should be vested in the Chairman of the Public Service Staff Relations Board authority, similar to that vested in the Minister of Labour by section 195 of Part V of the Canada Labour Code, to appoint, after consultation with the parties, a person to assist the parties in settling any dispute or difference.

Paragraph 181

R 89 Where a bargaining agent wishes to alter the dispute resolution process applicable to a bargaining unit, it should be required to

do so not more than eight months and not less than six months before the expiry of the applicable agreement or arbitral award.

Paragraph 185

Procedure for Determination of Designated Employees

R 90 Where a bargaining agent has opted for the conciliation board route, it should be entitled to require the employer's statement of designated employees to be furnished within the six months preceding the expiry of the applicable agreement or arbitral award.

Paragraph 184

R 91 Subsection 36(2) of the Public Service Staff Relations Act, which provides for the provision to the bargaining agent by the employer of a preliminary list of designated employees, should be deleted from the legislation.

Paragraph 186

R 92 If, either by agreement of the parties or by determination of the Board, more than 50% of the employees in a bargaining unit are ultimately designated, the bargaining agent should be permitted, subject to consent in that regard being given by the Board, to alter its specification from reference to a conciliation board to reference to arbitration.

Paragraph 187

R 93 The alteration referred to in Recommendation 92 should be made

not later than 10 days after the list of designated employees is officially established, or such longer period as the parties may agree in writing.

Paragraph 187

R 94 The employer should be permitted to submit additional statements of designated employees at any time, and the Board should be empowered to process these submissions and attach to the designations which it approves such conditions as it may deem appropriate.

Paragraph 188

R 95 The establishment of a conciliation board should not be held up because the Board has not completed processing of additional lists of designated employees.

Paragraph 188

R 96 After a strike has commenced, any member of the Board assigned for the purpose should be empowered to issue an order designating an employee for a short interim period, on the presentation to him, ex-parte if necessary, of sworn testimony either written or oral, the hearing on the merits to take place at the earliest possible opportunity thereafter.

Paragraph 189

R 97 Where a designated employee is required to perform duties on

a conditional basis and he alleges that the conditions have been violated by the directions of an agent of the employer, he should be required to perform the duties assigned to him, but his objection should be reported forthwith to the Board by or on behalf of the employee concerned, and it should be a prohibited practice for anyone to interfere with an attempt of the employee to communicate with the Board in such circumstances or unreasonably to refuse to permit an employee use of available facilities for such communication.

Paragraph 190

R 98 Upon a complaint to the Board that an agent of the employer has directed a designated employee to perform duties other than those required of him by the designation, a member of the Board should be authorized, after consulting with the parties, in a proper case to issue an interim order with regard to the performance of the duties assigned to the employee, and in this circumstance schedule a hearing of the allegation referred to in Recommendation 97 at the earliest possible time. Where it is established at a hearing that a designated employee was required, notwithstanding his objections, to perform duties that did not meet the condition on which he was designated, the Board should be empowered to order that the employee be compensated in an amount not in excess of five times his daily rate for each day on which the condition attaching to the designation was not observed.

Paragraph 190

R 99 Where the parties are unable to agree on the amount of compensation to be paid to an employee designated on a conditional basis, the Board should be empowered to conduct a hearing and make an appropriate ruling.

Paragraph 191

R 100 In relation to the propriety of designated employees participating in a strike vote, it is suggested that the several employee organizations concerned look into the situation and determine whether such designated employees are in a position to take undue advantage of their position when participating in such a vote.

Paragraph 192

R 101 The Chairman of the Public Service Staff Relations Board should not be entitled to notify the parties of his intention not to establish a conciliation board, where he reaches the conclusion that the establishment of such a board is unlikely to serve the purpose of assisting the parties in reaching agreement, until after the process relating to designation has been completed.

Paragraph 193

Conciliation Boards

R 102 The legislation should make it possible for the issue of good faith bargaining to be raised before the Board and should provide that the Board have exclusive authority, if it finds that a party requesting the establishment of a conciliation board has failed to bargain in good faith, to postpone the granting of the request

until the pre-condition has been met.

Paragraph 194

R 103 The Chairman of the Public Service Staff Relations Board should, in respect of the appointment of a conciliation board, be empowered to appoint a single commissioner in place of a three-man tribunal, but such an appointment should be made only after consultation with the parties.

Paragraph 195

R 104 The Act should provide that the Board, rather than the Chairman, have responsibility for establishing the terms of reference of a conciliation board.

Paragraph 196

R 105 Subsection 86(3) of the Public Service Staff Relations Act, which lists matters on which the conciliation board may not report (since they are not bargainable matters), should be revised to accord with the recommendations regarding the scope of bargaining.

Paragraph 197

R 106 The legislation should place an obligation on the parties to renew their negotiations following the release of the report of a conciliation board, but the time-frame for the renewed bargaining should be limited to fourteen days from the release to

the parties of the report of the conciliation board, or such longer period as they may agree upon.

Paragraph 198

Strikes

R 107 In view of Recommendation 106, the bargaining agent should not be entitled to call or authorize employees in a bargaining unit to engage in a strike until fourteen days have elapsed from the release to parties of the report of the conciliation board.

Paragraph 199

R 108 In order to permit the notification of designated employees of their status, subparagraph 102(2)(b)(i) of the Act should be amended to provide that no strike should be lawful, where the Chairman notifies the parties that a conciliation board will not be established, until the expiration of 21 days from the date of the Chairman's notice to the parties.

Paragraph 200

R 109 Employees should not be entitled to engage in a strike unless the strike is duly called or authorized by a bargaining agent that has been certified by the Board to represent them.

Paragraph 201

R 110 The responsible officers of the bargaining agent should be required to file with the Secretary of the Board, before a strike commences, a statement verifying the fact that a strike has been

called or authorized and setting forth the date when the strike is to commence.

Paragraph 201

R 111 The legislation should include a provision, similar to that which has been included in the Canada Labour Code (section 181), empowering the Board to suspend the right to strike during the period between Parliaments, if the strike, in the opinion of the Board, would adversely affect the national interest if it occurred.

Paragraph 202

R 112 The language of subsection 79(1) of the Act which refers to "designated" employees should be clarified expressly to include employees, the withdrawal of whose services would pose an imminent threat to the health of members of the public or would jeopardize the conduct of long-term experiments directly related to the preservation of the safety, security or health of the public.

Paragraph 203

R 113 Where in relation to a lawful strike

(a) a bargaining agent gives an undertaking to be filed with the Board that certain employees will continue to perform the full range of their duties or any specified portions thereof, the nature of which duties are spelled out in writing, and

(b) the parties agree that the employees to whom the undertaking applies are not otherwise subject to designation,

the employees concerned should be deemed to be designated employees subject to all restrictions that apply to designated employees.

Paragraph 204

R 114 The bargaining agent should not be entitled to withdraw the undertaking referred to in Recommendation 113 except,

(a) on 20 days written notice to the employer, and

(b) only with the consent of the Board and on such terms and conditions as the Board may determine.

Paragraph 204

R 115 The relevant provisions of the Public Service Staff Relations Act should be amended to ensure that the Board may make a declaration of unlawful strike, not only where the parent employee organization is at fault, but also if the strike is called or authorized by a subordinate segment of the parent organization.

Paragraph 206

R 116 Where a subdivision of an employee organization calls or authorizes an unlawful strike, the subdivision should be deemed a legal entity for purposes of being liable to prosecution and subject to processes before the Board.

Paragraph 206

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R 117 The Board should be authorized to issue a strike declaration where employees have engaged in an unlawful strike, even if there is no evidence of participation therein by officers of the organization, or that they condoned the unlawful action.

Paragraph 207

R 118 The Act should provide that every collective agreement must include a clause whereby the bargaining agent binds itself not to call or authorize a strike during the lifetime of a collective agreement and that, in default of the parties including such a clause, the Board could formulate such a clause for them which should be deemed to be incorporated in the collective agreement. An unlawful strike would thereby be made subject to a "civil" remedy through the grievance procedure.

Paragraph 208

R 119 There should be included among the prohibited practices a provision that no employee should do any act if he knows or ought to know that the probable and reasonable consequence of the act would be to cause another employee or employees to engage in an unlawful strike. Such a prohibition should not apply to any action taken in connection with a lawful strike.

Paragraph 209

R 120 The provisions of the present legislation for the levying of fines in respect of unlawful strike action should be modified in

one respect. To reflect the special significance which the law attaches to the involvement in strike action of an employee who has been designated as performing duties necessary for the safety and security of the public, the courts should be empowered to impose a fine for each day that such an employee is on strike.

Paragraph 210

R 121 The failure of a designated employee to perform the duties required of him, without an adequate excuse, should be an offence, whether the withholding of the services is done on his sole initiative or in concert with others.

Paragraph 210

Lockout

R 122 The legislation should include provisions authorizing the employer to lock out employees in the same circumstances and subject to the same limitations as apply in the case of a lawful strike.

Paragraph 211

R 123 The legislation should also provide for the issue by the Board, in appropriate circumstances, of a declaration of unlawful lockout, for the prosecution, on consent given by the Board, of an officer of the employer who locks out employees contrary to law, or who counsels or procures an unlawful lockout, and for the inclusion in collective agreements of a clause prohibiting an

unlawful lockout.

Paragraph 211

Arbitration of Interest Disputes

Note: In the recommendations which follow, "Arbitration" should be read in connection with Recommendation 204 et seq.

R 124 Since it is a pre-condition to a reference to arbitration that the parties "have bargained collectively in good faith," when such a reference is made it should be possible to raise before the Board the question of whether this condition has been complied with. The Board should have exclusive authority to postpone the reference to arbitration, where it finds that the referring party has failed to bargain in good faith, until this pre-condition has been met. This recommendation is analogous to that made regarding a request to establish a conciliation board. (See Recommendation 102.)

Paragraph 212

R 125 Where there has been a reference to arbitration, either party should be entitled to amend its specification of the items to be dealt with in arbitration but, to prevent abuse, such amendment should be made only with the consent of the Board and on such terms and conditions as the Board may determine.

Paragraph 213

R 126 Where matters have been tentatively agreed upon prior to a

reference to arbitration or left for subsequent negotiation, and notice to that effect is filed with the Board on the reference to arbitration, and the parties have not been able subsequently to arrive at a mutually satisfactory conclusion with regard to these matters, either party should be entitled to make a further reference to arbitration on arbitrable items, but such reference should be made not later than 30 days after the issue of the arbitral award, or such further time as the parties may agree upon.

Paragraph 214

R 127 Limitations beyond those applicable to the scope of bargaining, must continue to be imposed on the scope of matters that should be referable to arbitration.

Paragraph 221

R 128 In keeping with the recommendations dealing with the scope of bargaining and to maintain consistency with Recommendation 105, certain revisions should be made to the matters enumerated in subsection 70(3) of the Public Service Staff Relations Act.

Paragraph 223

R 129 Subsection 70(1) of the Public Service Staff Relations Act should be amended to read as follows:

> Subject to this section, an arbitral award may deal with

(a) compensation, including standards and rates of pay, and procedures relating to the administration thereof, and

(b) hours of work, leave entitlements, standards of discipline and other terms and conditions of employment directly related thereto.

Paragraph 226

R 130 Terms and conditions of employment relating to environmental factors affecting the health, safety and physical well-being of employees should continue to be excluded from reference to arbitration. These matters are bargainable, however, and the parties should explore the possibility of making this a matter for coalition bargaining.

Paragraph 230

Nature of Obligation to Bargain and Consult

R 131 The nature of the obligation to bargain, where the statute requires the parties to bargain collectively, or to consult, where the statute requires the parties to enter into consultation, should be spelled out clearly in the legislation, and non-compliance with the obligation should be capable of being made the subject of a complaint to the Board. In the case of bargaining, the obligation should be to meet and bargain in good faith and make every reasonable effort to conclude a collective agreement; in the case of consultation, the obligation should be to meet and consult in good faith and make every effort to resolve differences and problems.

Paragraph 234

Final Offer Selection

R 132 The legislation should permit the parties by mutual consent, notwithstanding the other provisions of the legislation, to resort to final offer selection in whatever form they deem best suited to their needs in a particular case.

Paragraph 237

R 133 Where the parties choose to resolve a dispute by resort to final offer selection, their written mutual agreement to proceed in this manner and the detailed procedures that are to be followed should be filed with the Board, and the parties should be bound by the procedure thus established, and the decision of the selector should have the same binding force as an arbitral award.

Paragraph 237

Chapter 5

RESOLUTION OF RIGHTS DISPUTES

Note: In the recommendations which follow, "Adjudication" should be read in connection with the Recommendation 204 et seq.

Right to Refer Grievance to Adjudication

R 134 The words "in respect of which no administrative procedure for redress is provided in or under an Act of Parliament" should be deleted from section 90 of the Public Service Staff Relations Act, and provision should be made that, where the reply of the employer at any level is that there is another administrative procedure for redress available, the grievance should be referred directly to the final level of the grievance process.

Paragraph 242

R 135 Where a department or agency responds to a grievance by indicating the grievance should be referred to another administrative procedure for redress, the reply should be required to inform the employee of the appropriate procedure for redress.

Paragraph 242

R 136 If the validity of such a reply is challenged by the employee, the employee concerned should be entitled to refer the matter to the Board for a ruling on the technical point at issue.

Paragraph 242

R 137 If the employee's "complaint" is determined on the merits by the other administrative process (either as a result of the reply from the employer under the grievance procedure or on his own initiative), the employee should be foreclosed from pursuing his grievance under the Public Service Staff Relations Act.

Paragraph 242

R 138 An employee who has been misinformed as to the proper process for redress, and does resort to the process indicated in the reply of the employer's agent, should be protected from losing his right to refer the grievance to adjudication by reason of any delay which results from such misinformation.

Paragraph 242

R 139 The Public Service Staff Relations Act should be amended to permit a bargaining agent and the employer to include in a collective agreement a provision that the bargaining agent should be entitled to present on behalf of employees a grievance relating to the interpretation or application in respect of identified employees of a provision of a collective agreement or arbitral award, but there should be an obligation on the bargaining agent to notify in writing any employee to be identified in such a grievance of its intent to file the grievance and, if the employee advises the bargaining agent in writing that he does not wish to be associated with the grievance, the bargaining agent should not be entitled to process the grievance in so far as it relates to such employee.

Paragraph 246

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R 140 The Public Service Staff Relations Act should ensure that rights that accrue to an employee during his term of employment should not be denied because of a loss of status of employee, and in relation thereto should provide for the protection of such rights and the availability of adequate remedies under the Act.

Paragraph 247

R 141 Section 98 of the Act should be amended to remove any doubts as to the authority of an adjudicator to provide a remedy, appropriate to the circumstances, where a bargaining agent, or the employer, seeks to enforce an obligation "owed" by the other party, under a collective agreement.

Paragraph 247

R 142 References to adjudication by either party should be permitted of questions relating to the interpretation or application of a collective agreement or arbitral award, even though the applying party is not seeking to enforce an obligation owing to it alleged to arise out of the collective agreement or arbitral award, but discretion should be vested in the Board to refuse to make a determination with respect thereto, and the determination of the adjudicator on such an application should be purely of a declaratory nature.

Paragraph 248

R 143 It is not recommended that matters dealt with by directives of the

employer following understandings arrived at by the National Joint Council be automatically subject to adjudication. However, either by mutual consent or as a result of agreements reached in the context of coalition bargaining (see Recommendation 201), adjudication would be available.

Paragraph 255

R 144 The authority of the Board to make a binding determination on any matter not otherwise subject to adjudication, which may be referred to it by mutual consent of the parties, should be provided for in the legislation.

Paragraph 256

R 145 Subject to Recommendations 147 and 148, exclusive authority to hear and determine any reference relating to the removal by the employer of an employee from the Public Service, other than an employee who has not completed the prescribed initial probation period, whatever the reason that may be adduced by the employer to justify the removal (i.e., either misconduct or incompetence), should be provided for under the Public Service Staff Relations Act and determined, on reference, by the Public Service Staff Relations Board. (See also Recommendation 49.)

Paragraph 264

R 146 Review of an employer action involving the involuntary demotion of an employee, or of a declaration by the employer that an

employee has abandoned his position, should be provided for under the Public Service Staff Relations Act and determined, on reference, by the Public Service Staff Relations Board.

Paragraph 265

R 147 The Public Service Commission should retain authority for the review of action taken against an employee because of political partisanship under section 32 of the Public Service Employment Act or because of irregularities or fraudulent practices relating to appointment, under section 41 of that Act. Similarly, actions taken with respect to an employee under section 112 of the Public Service Staff Relations Act would not be affected by Recommendation 145.

Paragraph 265

R 148 The Public Service Commission should also retain authority for review of any dispute relating to the duration of appointment of a person appointed for a specified period, or in respect of the "non-renewal" of such an appointment.

Paragraph 265

R 149 The existing entitlement of employees employed in a managerial or confidential capacity with regard to disciplinary action should be retained, and the jurisdiction of the Commission in the case of incompetence or incapacity should be transferred to the Public Service Staff Relations Board, as is recommended for other employees under Recommendations 145-146.

Paragraph 266

R 150 Where the action of the employer based on the incompetence or incapacity of the employee is held to be well-founded with respect to the position he occupies and would result in the separation of an employee from the Public Service, but the adjudicator concludes that the employee is not so incompetent or incapacitated that he is incapable of performing the duties of another position, the adjudicator should have the discretion to recommend to the Commission that he be given another appointment appropriate to his qualifications, and the Commission should have authority to assign to such a person the status of a lay-off. (See also Recommendations 33, 36, 40 et seq.)

Paragraph 267

R 151 The authority of an adjudicator in a disciplinary grievance should, for greater certainty, expressly include the power to assess the penalty imposed by the employer and, in the event of a determination that the discharge or discipline was for "cause," be empowered to substitute such other penalty as seems to him to be just and reasonable in the circumstances, unless the collective agreement provides a specific penalty for the infraction involved. Such a provision would be similar to section 157 of the Canada Labour Code.

Paragraph 270

R 152 Section 96 of the Public Service Staff Relations Act should be amended to make clear the authority of the adjudicator to provide

an effective remedy by declaring that an adjudicator in rendering a decision is empowered to direct where requisite, but subject to any provision of the Act that limits his authority in respect of certain types of grievances, such action to be taken as may be appropriate in the circumstances.

Paragraph 270

R 153 Classification grievances presented by employees included in a bargaining unit for which a bargaining agent has been certified should be adjudicable under the provisions of a revised Public Service Staff Relations Act.

Paragraph 272

R 154 It should be left to the employer to determine whether or not recommendations relating to the adjudication of classification grievances should be applied to persons not included in bargaining units and to managerial and confidential personnel and, if they are not applied, the nature of the review process that should be available to such persons.

Paragraph 286

R 155 Although an employee should be entitled to file a classification grievance at any time, he should be encouraged to continue to make use of an informal review procedure to seek clarification of any matter relating to his classification by discussion of such matters with his supervisor.

Paragraph 273

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R 156 Where an employee institutes a classification grievance without first seeking such a review, he should be required to present his grievance within the period fixed by the regulations of the Board for filing such a grievance.

Paragraph 273

R 157 An employee who has presented his supervisor with a written request for review of the classification of his position should be required to file a grievance not later than 30 days from the date on which he is given notice that the original classification decision has been confirmed or, if no such notice has been given to him, not later than twelve months from the day on which he submitted a written request for review to his supervisor.

Paragraph 273

R 158 The legislation should provide that an adjudicator should not be entitled to set aside a decision of a classification officer unless he is satisfied

(a) that there was an erroneous finding of fact as to duties and responsibilities expressly assigned to the employee, or that were regularly performed by him with the knowledge of the person under whose direction the duties and responsibilities were performed, of such a nature as to warrant the position being given a different classification, or

(b) that there has been a significant deviation or departure from the standard as applied in the case of the aggrieved employee.

Paragraph 274

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R 159 Where an adjudicator has determined that an aggrieved employee was incorrectly classified,

(a) he should be authorized to direct that the employee be compensated at the rate applicable to the employee, having regard to the classification of the position as found by the adjudicator to be appropriate, and

(b) the employer should take such action as may be necessary to regularize the situation.

Paragraph 275

R 160 Where the decision of an adjudicator with respect to classification involves an upward change in the employee's pay entitlement, the adjudicator should be empowered to determine, within certain limits, the period of retroactivity applicable to any pay adjustment, and the limits on retroactivity should be

(a) for a period that does not pre-date by more than 30 days the date on which the employee requested a review of the classification decision or does not exceed twelve months from the date on which a grievance in respect thereof was presented, or

(b) if the employee did not ask for such review, for a period that does not pre-date by more than 30 days the date on which he presented his grievance.

Paragraph 276

R 161 Where the decision of the adjudicator involves a downward change in the employee's pay entitlement, such change should not be made retroactive to a date earlier than the day on which the adjudicator's decision is communicated to the parties.

Paragraph 276

R 162 Where an employee's duties and responsibilities have been increased on his own initiative, even though with the knowledge of his supervisor, and in the course of a review or the consideration of a grievance the employer formally reduces the duties and responsibilities to conform to those previously assigned, the adjudicator should be bound, on any reference to adjudication, to make his decision on the basis of the duties as readjusted by the employer, but he should have authority to direct the employer to compensate the employee at the rate applicable to the classification which the adjudicator determines was proper for the period prior to the adjustment.

Paragraph 277

R 163 Where a new or substantially revised classification standard is to be applied to a group of positions, the Board should be empowered, on application by the employer, to defer, for a period to be determined by the Board, adjudication of any classification grievances related to positions in any occupational group that were reclassified under the revised standard.

Paragraph 279

R 164 Where the Board has deferred consideration of a classification grievance at the request of the employer, as provided in Recommendation 163, the rights of the employee should be preserved (with only the review and enforcement postponed) including those relating to retroactivity - i.e., the deferment should not be counted

in calculating the 12 month maximum period for retroactivity as proposed in Recommendation 160.

Paragraph 279

R 165 An employee should be entitled to process a classification grievance through the various levels on his own initiative, but should not be entitled to process it to adjudication without the consent of the bargaining agent.

Paragraph 280

R 166 Where a request for the review of a classification decision has been made by an employee and he has not thereafter presented a grievance relating thereto within the time limits established by the relevant regulations of the Board, or where a classification grievance has been processed by him to adjudication and dealt with on its merits, the employee should be barred from presenting a further grievance in respect of the same issue unless he can establish that a material change has occurred in the situation.

Paragraph 281

R 167 Employees who have sought redress under the procedures for review of classification grievances operable before the revision of the legislation should carry these to a conclusion under the existing machinery, and should be barred from resorting to the new remedies except in those instances where the request for review was made not more than 45 days before the legislation comes into force.

Paragraph 282

R 168 An opportunity should be afforded to employees to present grievances alleging that the environmental conditions in which they are carrying out their duties at the time the grievance is presented are below the standard generally prevailing in the community in which they are employed, or otherwise determined as being generally applicable to the Public Service, having regard to the nature of their occupation and the type of work performed. However, such grievances should be referable to adjudication only by employees in bargaining units, and with the consent of the bargaining agent.

Paragraphs 287 and 289

R 169 The jurisdiction of the adjudicator in relation to an environmental grievance should be limited to a finding of fact as to whether the conditions do or do not fall below the community standard or the standard otherwise established, but where the finding is "in favour of the employee," the employer should be required to inform the Board, within such time limits as may be fixed by the Board, of the action, if any, it has taken or proposes to take to remedy the condition complained of.

Paragraph 289

R 170 Where an environmental grievance is referred to an adjudicator, he should be empowered to give notice to other bargaining agents representing employees who might also be affected, and to join them as parties in the proceeding before him.

Paragraph 288

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R 171 If, in the course of proceedings before the adjudicator involving an environmental grievance, the employer informs the adjudicator that a standard relating to the condition that gave rise to the grievance is in course of development or that the matter is under consideration by a joint body representative of the employer and employees, the adjudicator should be vested with discretion to adjourn the hearing or postpone issuing a decision on the grievance for such length of time as may appear to him to be reasonable.

Paragraph 288

R 172 A grievance relating to environment which derives from or relates to the provisions of a collective agreement should be processed and dealt with by an adjudicator fully in accordance with the provisions of the collective agreement.

Paragraph 290

R 173 Designated employees should be entitled to refer to adjudication grievances on matters arising during a lawful strike as if the collective agreement applicable to them had remained in force to the extent that the terms and conditions of employment contained in the collective agreement are applicable in the circumstances that exist in the course of a strike.

Paragraph 291

R 174 The Board should be empowered by a provision similar to subsections

160(4) and (5) of the Canada Labour Code to process to adjudication an employee's grievance alleging non-observance of any term or condition of employment continued in effect during the bargaining process under section 51 of the Act.

Paragraph 292

R 175 Employees should be entitled to process a grievance in the circumstances identified in Recommendation 174 if it is presented within the time limits fixed by the Board for the presentation of grievance, i.e., even if the grievance is first presented after the expiration of the period fixed by section 51 of the Act as amended.

Paragraph 292

Procedure for Presenting Grievances

R 176 The Board should have the exclusive authority to make regulations governing the processing of grievances and be authorized not only to make regulations having general application, but also to issue orders applicable to particular bargaining units or departments or agencies. These orders should be made only on application of the parties and would vary the general regulations to meet special circumstances.

Paragraph 294

R 177 Where a collective agreement, in operation at the time of the coming into force of regulations made under Recommendation 176, provides for grievance procedures that are not in accordance with the regulations made by the Board, the parties should continue to

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be bound by the procedures in the collective agreement until it expires, notwithstanding the regulations.

Paragraph 296

R 178 The parties to collective bargaining in the Public Service are urged to establish machinery at the highest level to review jointly grievances referred to adjudication before they are heard by an adjudicator, with a view to ascertaining whether an acceptable solution can be worked out.

Paragraph 301

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Chapter 6

MISCELLANY

Basic Freedoms, Prohibited Practices and Related Matters

R 179 Generally speaking sections 6, 8, 9 and 10 of the Public Service Staff Relations Act should be revised so that the language conforms to that in comparable sections of the Canada Labour Code, modified as may be necessary to take account of conditions in the Public Service.

Paragraph 302

R 180 The Public Service Staff Relations Act should continue to provide that the greatest degree of union security that may be bargained by a certified bargaining agent is "maintenance of membership."

Paragraph 304

R 181 There should be included in the "prohibited practices" provisions of the Act a clause imposing on a bargaining agent the duty of fair representation in processing grievances.

Paragraph 305

R 182 The decision of a bargaining agent to withhold its consent to the processing of a grievance should not be capable of being upset where the bargaining agent has, in good faith, withheld consent.

Paragraph 305

R 183 The legislation should provide that the Board be empowered to

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direct, inter alia, where it finds that an employee has been denied fair representation, that the employee be entitled to present a grievance and carry it to adjudication, where adjudication is available, without the prior approval of the bargaining agent.

Paragraph 306

R 184 The employer should be required by the legislation to respond to a grievance presented as provided for in Recommendation 183 even though it is presented outside the time limits otherwise fixed for the presentation of grievances under the Act, and any monetary award made in respect of the grievance should be assessed against the bargaining agent to the extent to which the default of the bargaining agent resulted in the award being larger than it might otherwise have been.

Paragraph 306

R 185 The legislation should contain a provision similar to section 162 of the Canada Labour Code permitting an employee who is represented by a bargaining agent to authorize the employer in writing, at any time after the date on which the bargaining agent becomes entitled to represent him, to deduct from his wages the amount of the regular monthly membership dues payable by him to the bargaining agent, such authorization to be revocable, but this latter provision should not be applicable where the employee is bound by requirements in a collective agreement to have his membership dues or an equivalent deducted from his salary or wages.

Paragraph 307

Limited Type of Membership for Certain Public Servants

R 186 A person who is an employee in a bargaining unit at the time he is identified as a person employed in a managerial or confidential capacity should be permitted to retain a form of membership in the employee organization of which he was a member at the time he was so identified, subject to the following conditions:

(a) The type of membership retained should preclude such a person from participating in, or voting on, any matter connected with any aspect of collective bargaining or consultation provided for by the Act, or with employer-employee relations, and from holding any office in the organization.

(b) The conditions on which membership is to be retained should be clearly spelled out in the constitution of the organization in terms acceptable to the Board. However, for an interim period, if the relevant constitution does not contain such a provision, membership could be retained by a person notwithstanding the absence of an appropriate provision in the constitution, if he files with the Board, within such period as the Board may prescribe, a document binding himself to restrict his activities in the organization in the manner indicated above. The interim period should not extend beyond the date of the constitutional convention of the employee organization concerned next following the coming into force of the revised legislation.

Paragraph 310

R 187 Persons employed in a managerial or confidential capacity who, at the time the revised legislation comes into force, are members of an employee organization, should be entitled to retain their membership on the same basis as those who are identified after the amended legislation comes into force.

Paragraph 310

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R 188 It should be an improper practice for a person to contravene an undertaking given pursuant to paragraph (b) in Recommendation 187.

Paragraph 310

R 189 The right of a person employed in a managerial or confidential capacity to be represented by an employee organization in the processing of a grievance should be revoked, except for grievances arising out of an action or circumstance which occurred prior to the time when the person was identified.

Paragraph 310

Issues Concerning Representation of Employees by a Bargaining Agent

R 190 The legislation should require every bargaining agent to provide to the Board an undertaking that its collective bargaining policies in all matters affecting the interests of public servants will in every case be controlled in their entirety by those members of the bargaining agent who are public servants. The legislation should also give the Board authority to provide a remedy where the undertaking is not observed by the bargaining agent.

Paragraph 311

R 191 The evidence of membership required to secure a representation vote, on an application for certification of a bargaining agent for a unit for which there is no other bargaining agent, should be established by law at 35%, in conformity with similar requirements of the Canada Labour Code.

Paragraph 312

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R 192 The formula for determining majority support for an employee organization applying for certification, where a ballot is taken, should conform to the provisions in this regard of the Canada Labour Code, which require the applicant to secure the support of a majority of those voting, provided however that no certification may be granted where less than 35% of the eligible voters have cast ballots.

Paragraph 313

Merger of Existing Bargaining Units

R 193 The Board should be empowered to combine existing bargaining units, the employees of which are represented by the same bargaining agent, without the need for a new application for certification, where (a) the application for such a merger is made with the consent of both parties, and (b) the Board is satisfied that the bargaining between the parties would be furthered by such a combination. In arriving at a decision on such an application, the Board would, of course, take into account any representations that individual employees or groups of employees might see fit to make.

Paragraph 314

R 194 Where a merger is approved, the Board should have authority to determine, in the absence of agreement between the parties, how the several collective agreements relating to the previous units are to be consolidated and what adjustment of rights may be necessary to enable one agreement to be applicable to the new merged unit.

Paragraph 316

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R 195 The Board should have authority, where units are merged, to permit some of the agreements to be terminated before their normal expiration date and also to set a date when notice to bargain could be given on behalf of the employees in the combined unit, notwithstanding that the date for the giving of notice under the several agreements governing the previously established units had not been reached.

Paragraph 316

Dissolution of Council of Employee Organizations

R 196 Where a council of employee organizations that has been certified as a bargaining agent is about to be dissolved, the Board should be empowered to determine, on application by the employer, the council of employee organizations, or any constituent member of such a council, whether any constituent member of such a council should retain any bargaining rights in the case of dissolution of the council and, if so, to determine what the appropriate bargaining units should be and what ancillary rights should be vested in or retained by any of the members of the dissolved council. As in the case of a merger of bargaining units, the employees in the unit would be afforded an opportunity to make representations concerning the disposition of such an application.

Paragraph 317

Effects of Classification Action on Composition of Bargaining Units

R 197 Where by reason of classification action on the part of the employer, the employer or the bargaining agent alleges that the entitlement of an employee organization to represent any

substantial group of employees in the Public Service is affected, the Board should have authority to determine whether the employees are included in any bargaining unit for which a bargaining agent has been certified, or whether they are not included in any unit, and in relation thereto the Board should be empowered to examine such records, hold such representation votes, amend or vary any certificates it may have issued, issue new certificates and issue such orders concerning the rights of the employer, the employees and the bargaining agent or agents as it may deem appropriate.

Paragraph 320

"Acting Appointments"

R 198 In relation to the rights of an employee appointed on an "acting" basis to a position in a bargaining unit other than the unit in which his continuing position is located, the legislation should provide as follows:

(a) Subject to the remaining parts of this recommendation, his terms and conditions of employment should be governed by the collective agreement applicable to the "acting position."

(b) If the collective agreement appropriate to the acting position fixes a waiting period until the end of which an employee is not entitled to receive acting pay, the acting appointee should not receive acting pay until the end of that period. If he continues to hold the acting position beyond this waiting period, the rate of pay he receives for the acting position should be determined by the agreement appropriate to the acting position.

(c) If there is a check-off provision applicable to employees in the unit for the position which the acting appointee held at the time of his appointment, the employer should continue to check off his dues in accordance with that agreement and should transmit them to the

bargaining agent for that unit for a period of 60 days next following the end of the month in which he was given the acting appointment.

(d) The bargaining agent for the unit of which he was a member at the time he received the acting appointment should be obliged to process a grievance with respect to any claim the employee was entitled to present up to the time he was given the acting appointment.

(e) The bargaining agent for the unit appropriate to the acting position should be obliged to process a grievance with respect to any claim the acting appointee was entitled to present during the time he was serving in the acting position.

(f) If, during the period that he is serving in the acting position, his employment in the Public Service or in the acting position is terminated, the acting appointee should be deemed to have reverted to his former position and his entitlement to notice, severance benefits and related matters should be determined according to the provisions of the collective agreement applicable to the unit appropriate to his former position.

Paragraph 323

Some Problems Concerning Implementation and Modification of Collective Agreements and Arbitral Awards

R 199 The Public Service Staff Relations Act should be revised to permit the parties to agree to an extension of the 90 day period for implementation of the provisions of a collective agreement or arbitral award, without the need for recourse to the Board.

Paragraphs 326 and 328

R 200 The Public Service Staff Relations Act should be amended to permit the parties, by mutual consent, to alter the provisions

of a collective agreement, except the provision relating to duration, at any time during the lifetime of the agreement, as is the case under subsection 160(1) of the Canada Labour Code. A similar amendment should be made regarding the alteration of the provisions of an arbitral award.

Paragraphs 327 and 328

R 201 Where the employer and a bargaining agent representing employees in several bargaining units, or the employer and several bargaining agents, reach agreement on a provision that is to have common application to the employees in a number of bargaining units and they also undertake that these provisions are to be binding on them and on the employees in the several bargaining units for a fixed period of time

(a) the undertaking should be binding on the parties and the employees for the length of the period fixed in the undertaking notwithstanding that the several collective agreements might expire at dates earlier than the expiry date fixed in the undertaking, and

(b) during the time the undertaking is in effect, its provisions should supersede any provision in a collective agreement that may thereafter be negotiated or any provision included in any arbitral award for each separate bargaining unit, that is inconsistent with the undertaking.

Paragraph 329

R 202 The problem that may arise in reaching settlements where the employer is a separate employer, because of the legislative

requirement for approval of the Governor in Council, should be looked into by the appropriate authorities at the earliest opportunity.

Paragraph 330

Chapter 7

THE BOARD

Structure and Organization

R 203 The present tri-partite Board, the representative members of which serve on a part-time basis, should be replaced by a public member, full-time Board. In addition, provision should be made to permit the appointment of part-time members to meet the need for specialized personnel or having regard to the nature and extent of the work load.

Paragraphs 340 and 347

R 204 The functions now performed by the Public Service Arbitration Tribunal and by the adjudicators should be vested in the Board.

Paragraph 340

R 205 Appointments to the Board should be made by the Governor in Council after consultation with the employer and the bargaining agents. Members should be appointed initially for a period of five years and, after the conclusion of the initial five-year period, should be continued in office, on the recommendation of the Chairman until attaining age 70.

Paragraph 346

R 206 Board members should be removable during their terms of office only on an address of the Senate and the House of Commons.

Paragraph 346

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R 207 The Board should consist of the Chairman, three Vice-Chairmen and as many other full-time members (not less than five) as may be determined by the Governor in Council to be necessary to enable the Board to perform its functions adequately.

Paragraph 347

R 208 One of the Vice-Chairmen should be designated the senior Vice-Chairman in whom would be vested authority to act in the place and stead of the Chairman during his absence or inability to act, or where there is a vacancy in the office of the Chairman.

Paragraph 347

R 209 Some of the members of the Board should be drawn from persons who have had experience in collective bargaining on the side of the employers and some from persons who have had experience in collective bargaining on the side of employees. The Board should be composed of a mix of persons, some of whom have had legal training and some laymen acquainted with various aspects of employer-employee relations.

Paragraph 347

R 210 Members of the Board to whom classification grievances should be referred should be specialists particularly qualified to deal with classification problems.

Paragraph 348

R 211 The Board should be authorized to sit in divisions, and the Chairman of the Board should be entrusted with authority to determine the composition of a division of the Board to deal with any type of application and to assign members to divisions. A division should consist of one member, or of any odd number of members, as the Chairman in his discretion may determine having regard to the nature of a particular proceeding.

Paragraph 349

R 212 The Chairman should appoint two non-voting advisers to the Board in any hearing of an interest dispute, one adviser should be appointed to represent the interests of the employer and one to represent the interests of the bargaining agent.

Paragraph 350

R 213 Advisers appointed pursuant to Recommendation 212 should be drawn in the main from two standing panels, each appointed by the Board on the nomination of the respective parties, as is now provided under the statute, but any party to a proceeding should be entitled, with the approval of the Chairman, to appoint an ad hoc adviser for a particular case, rather than have a member of the appropriate panel designated.

Paragraph 350

R 214 No adviser should be entitled to make any report or observation

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with respect to the decision of the Board.

Paragraph 350

R 215 In classification grievances, each of the parties should be permitted to nominate an adviser, if it so desires, to sit with the Board throughout the hearing and to assist it in determining the matters at issue. The decision on the grievance would be made by the Board alone and no adviser should be entitled to make any report or observation with respect to the decision.

Paragraph 351

R 216 The Chairman of the Board should be vested with discretion, either on the request of one or both of the parties or on his own initiative, to have an adviser or more than one adviser sit with a division of the Board in any proceeding.

Paragraph 352

R 217 Subsection 13(2) of the Public Service Staff Relations Act should be amended to permit a member who has resigned to continue in office for such period as may be necessary to complete any cases in which he was involved as a member.

Paragraph 353

Powers of the Board

R 218 The Board should be empowered to make regulations respecting the hearing and determination of any matter that lies within its jurisdiction, to examine and inquire into all types of complaints

that may be made by an employee, the employer, an employee organization or an officer, official or person acting on behalf of any of them, where the complainant alleges failure of someone to give effect to any provision of the Act, and to summon witnesses and compel the production of documents as may be requisite to the proper conduct of all proceedings within the jurisdiction of the Board, including adjudication proceedings presided over by a member of the Board.

Paragraphs 354 and 355

R 219 The power to compel attendance of witnesses or to compel them to testity or produce documents where privilege is claimed, as distinct from the power to issue a summons, should not be conferred upon the Board, but should be declared in the Act to lie within the Federal Court, which should be empowered to deal with such matters on motion made on behalf of the Board.

Paragraph 356

R 220 Section 23 of the Public Service Staff Relations Act, which authorizes the Board to review decisions of the Arbitration Tribunal and of adjudicators on questions of law or jurisdiction, should be deleted.

Paragraph 361

R 221 The authority vested in the Board by section 25 of the Public Service Staff Relations Act to reconsider its own decision, and

to alter or amend it if it concludes that the circumstances warrant, should be retained, but should be amended to fix a relatively short time limit, say three months, within which such an application for reconsideration could be made. This authority does give a capacity to the Board to correct any error (including those of law or jurisdiction) if it is shown to have erred.

Paragraph 362

R 222 Provision should be made in section 25 of the Public Service Staff Relations Act for the Board to review inconsistent decisions of the several divisions of the Board upon leave being granted by the Chairman.

Paragraph 362

Chapter 8

THE PAY RESEARCH BUREAU

R 223 The Pay Research Bureau should continue under the administrative control of the Public Service Staff Relations Board.

Paragraph 373

R 224 Statutory recognition of this responsibility should be made by the Public Service Staff Relations Act containing a provision empowering the Board to collect, analyze, present and make available data relating to wages, benefits and employment practices in public and private employment.

Paragraph 375

R 225 Intensive research into national and regional economic and compensation trends and developments and into changing employee values and expectations in the community should be carried out under this authority to permit assessment of whether the reward systems of the Public Service meet present and evolving needs.

Paragraph 378

R 226 There should be a substantial expansion of the developmental and research functions of the Board, and the Act should incorporate a provision indicating the responsibility of the Board to study and analyze criteria and guidelines for the determination of interest disputes. The enhancement of this capacity of the Board will

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depend ultimately on resource commitments that take into account the size of the total payroll of the Public Service.

Paragraph 380

Chapter 9

SOME CONCLUDING REMARKS

The Post Office: Proposal for Establishment of a Crown Corporation

R 227 It is not recommended that the employer-employee relationship in the Post Office be governed by Part V of the Canada Labour Code.

Paragraph 382

"Compatibility" of Statutory Provisions

R 228 The appropriate authorities should examine the statutes which authorize various bodies to prescribe terms and conditions of employment for public servants, particularly statutes relating to the separate employers, to consider the removal of the appearance of conflict between those statutes and the Public Service Staff Relations Act.

Paragraph 384

R 229 In the revision of legislation governing employer-employee relations in the Public Service (Public Service Employment Act, Public Service Staff Relations Act, and Financial Administration Act), and in the preparation by administrative authorities of regulations and other instruments relating to employment conditions in the Public Service, consideration should be given to the provision of compatible definitions of various types of employment.

Paragraph 385

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Labour Management Committees

R 230 The Board should be vested by law with responsibility for the encouragement of and the provision of assistance and advice to the parties in the establishment of labour-management committees throughout the Public Service.

Paragraph 386

Communication

R 231 To assist improved employment relationships, it would be desirable if everyone having a responsibility for employer-employee relations in the Public Service, whether in relation to the administration of law and other instruments of authority or in the structure and climate of day to day relationships, were periodically to identify the information which needs to be communicated and develop systematic approaches to the improvement of channels of communication.

Paragraph 387

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